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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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RECORDS INC.; SONY BMG MUSIC
ENTERTAINMENT; and UMG
RECORDINGS, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION

JCS

CV 08

3992

CASE NO. _____

LAVA RECORDS LLC, a Delaware limited
liability company; WARNER BROS.
RECORDS INC., a Delaware corporation;
SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; and UMG
RECORDINGS, INC., a Delaware corporation,

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

Plaintiffs,

v.

JOHN DOE,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Case No. _____

#39491 v1

JURISDICTION AND VENUE

1
2 1. This is a civil action seeking damages and injunctive relief for copyright infringement
3 under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

4 2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal
5 question); and 28 U.S.C. § 1338(a) (copyright).

6 3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the
7 true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant
8 may be found in this District and/or a substantial part of the acts of infringement complained of
9 herein occurred in this District. On information and belief, personal jurisdiction in this District is
10 proper because Defendant, without consent or permission of the copyright owner, disseminated over
11 the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief,
12 such illegal dissemination occurred in every jurisdiction in the United States, including this one. In
13 addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to
14 provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

PARTIES

15
16 4. Plaintiff Lava Records LLC, a limited liability company, is a joint venture between
17 Atlantic Recording Corporation and Diamond Music LLC, and is duly organized and existing under
18 the laws of the State of Delaware, with its principal place of business in the State of New York.

19 5. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing
20 under the laws of the State of Delaware, with its principal place of business in the State of
21 California.

22 6. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general
23 partnership, with its principal place of business in the State of New York.

24 7. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the
25 laws of the State of Delaware, with its principal place of business in the State of California.

26 8. The true name and capacity of Defendant are unknown to Plaintiffs at this time.
27 Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant
28 by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs

1 believe that information obtained in discovery will lead to the identification of Defendant's true
2 name.

3 **COUNT I**
4 **INFRINGEMENT OF COPYRIGHTS**

5 9. Plaintiffs incorporate herein by this reference each and every allegation contained in
6 each paragraph above.

7 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of
8 exclusive rights under United States copyright law with respect to certain copyrighted sound
9 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this
10 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted
11 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright
12 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of
13 Exhibit A.

14 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the
15 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted
16 Recordings to the public.

17 12. Plaintiffs are informed and believe that Defendant, without the permission or consent
18 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to
19 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies
20 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant
21 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.
22 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the
23 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and
24 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive
25 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are
26 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously
27 downloaded and/or distributed to the public additional sound recordings owned by or exclusively
28 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of

1 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being
2 distributed by Defendant.)

3 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
4 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
5 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
6 These published copies were widely available, and each of the published copies of the sound
7 recordings identified in Exhibit A was accessible by Defendant.

8 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been
9 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

10 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
11 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
12 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to
13 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

14 16. The conduct of Defendant is causing and, unless enjoined and restrained by this
15 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
16 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
17 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
18 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound
19 recordings made in violation of Plaintiffs' exclusive rights.

20 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

21 1. For an injunction providing:

22 "Defendant shall be and hereby is enjoined from directly or indirectly
23 infringing Plaintiffs' rights under federal or state law in the
24 Copyrighted Recordings and any sound recording, whether now in
25 existence or later created, that is owned or controlled by Plaintiffs (or
26 any parent, subsidiary, or affiliate record label of Plaintiffs)
27 ("Plaintiffs' Recordings"), including without limitation by using the
28 Internet or any online media distribution system to reproduce (*i.e.*,
download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload)
any of Plaintiffs' Recordings, except pursuant to a lawful license or
with the express authority of Plaintiffs. Defendant also shall destroy
all copies of Plaintiffs' Recordings that Defendant has downloaded
onto any computer hard drive or server without Plaintiffs'
authorization and shall destroy all copies of those downloaded

recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

By


DAWNIELL ZAVALA

Attorney for Plaintiffs

LAVA RECORDS LLC; WARNER BROS.

RECORDS INC.; SONY BMG MUSIC

ENTERTAINMENT; and UMG RECORDINGS, INC.

EXHIBIT A

EXHIBIT A**JOHN DOE****IP Address:** 169.233.32.201 2008-04-02 15:09:15 EDT**CASE ID#** 165007626**P2P Network:** GnutellaUS**Total Audio Files:** 1142

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	The Used	All That I've Got	In Love And Death	362-132
Lava Records LLC	Simple Plan	Crazy	Still Not Getting Any...	375-167
SONY BMG MUSIC ENTERTAINMENT	The Offspring	(Can't Get My) Head Around You	Splinter	339-759
SONY BMG MUSIC ENTERTAINMENT	Train	Train	Train	298-334
UMG Recordings, Inc.	The Killers	Mr. Brightside	Hot Fuss	355-962
Warner Bros. Records Inc.	My Chemical Romance	Helena	Three Cheers for Sweet Revenge	360-197
Warner Bros. Records Inc.	Red Hot Chili Peppers	My Friends	One Hot Minute	243-059
UMG Recordings, Inc.	Papa Roach	Getting Away With Murder	Getting Away With Murder	360-567
UMG Recordings, Inc.	Blink-182	I'm Lost Without You	Blink-182	345-359
SONY BMG MUSIC ENTERTAINMENT	Journey	Send Her My Love	Frontiers	43-223

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